

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS
D. P. MARSHALL JR., JUDGE

DIVISION II

CA06-1191

20 June 2007

PATHY SELLARS,

APPELLANT

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F214185]

v.

ST. VINCENT HEALTH SERVICES
and PREFERRED PROFESSIONAL
INSURANCE,

APPELLEES

AFFIRMED

Pathy Sellars appeals the Workers' Compensation Commission's decision denying her additional medical treatment, additional temporary total disability benefits, and a ten percent permanent impairment rating. Because substantial evidence supports the Commission's decision, we affirm it.

Sellars, an LPN, slipped on the floor while helping a patient in October 2002. She suffered a compensable hip injury. St. Vincent paid for Sellars's medical treatment (including hip surgery) through mid-June 2004, temporary total disability benefits

through July 2003, and temporary partial disability benefits until July 2004.

In May 2004, Sellars's primary doctor suggested that she had exhausted all of her conservative care options. He referred her to a hip specialist to determine if another surgery was appropriate. Sellars went to the hip specialist, and he did not recommend that she undergo another surgery.

As of July 2004, Sellars had been working only part time for St. Vincent doing desk work (due to restrictions from her doctor) for a year. Sellars's part-time job ended in July 2004. She did not seek another job after that time. On 5 October 2004, Sellars's doctor (Dr. Kenneth Rosenzweig) wrote a letter about her permanent impairment. He stated:

The AMA Guides to the Evaluation of Permanent Impairment in regard to cartilage tears in the hip is relatively silent. Therefore, one must speculate on what her impairment is. Ms. Sellars has a documented labral tear with secondary reactive synovitis with unsuccessful surgical management with a cascading pain problem and, therefore, it is recommended to issue a 10% whole person and 25% lower extremity impairment rating as a result of this injury using fourth edition, extrapolating on table 62 for hip function that has an advanced arthritic hip but not end-stage bone-on-bone.

I.

The Commission determined that Sellars was not entitled to additional medical treatment after 5 October 2004. St. Vincent was required to provide medical treatment that was reasonably necessary for the treatment of Sellars's compensable hip

injury. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Ark. Dep't of Correction v. Holybee*, 46 Ark. App. 232, 234, 878 S.W.2d 420, 421 (1994). St. Vincent was required to pay for medical treatment from the date of injury through the time that Sellars's doctors determined that she had exhausted conservative treatment options and that another surgery was not an option. The Commission found that Sellars failed to prove that additional medical treatment was reasonably necessary after 5 October 2004. And substantial evidence of record supports the Commission's decision. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 265, 209 S.W.3d 445, 448 (2005).

The Commission also found that Sellars failed to prove an entitlement to temporary total disability benefits from July 2004 (when St. Vincent eliminated her part-time position based on lack of available work) through October 2004. To receive temporary total disability benefits, Sellars had to prove by a preponderance of the evidence that she was within a healing period and was totally incapacitated from earning wages. *Searcy Industrial Laundry, Inc. v. Ferren*, 92 Ark. App. 65, 69, 211 S.W.3d 11, 13 (2005). Although she failed to present medical evidence of a total incapacity to earn wages, Sellars testified that she could not work, was in pain, and was taking pain medication after July 2004. Experiencing pain, however, does not necessarily equal a total incapacity to work. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 132, 628 S.W.2d 582, 586 (1982). Substantial evidence supports the

Commission's decision on this issue. *Stone*, 91 Ark. App. at 265, 209 S.W.3d at 448.

II.

The difficult issue is whether Sellars is entitled to a ten percent permanent impairment rating. This is a close question because the Commission found that her injury resulted in a physical abnormality but nonetheless denied her a permanent impairment rating. The Commission has adopted the American Medical Association's Guides to the Evaluation of Permanent Impairment (4th ed. 1993) for assessing anatomical impairments. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 33, 115 S.W.3d 823, 828 (2003). Dr. Rosenzweig used the Guides in assigning Sellars a ten percent permanent impairment rating. But he noted that "one must speculate on what her impairment is" because the Guides is silent about cartilage tears in the hip. Although the Guides recognizes that it "does not and cannot provide answers about every type and degree of impairment," the Commission rejected Dr. Rosenzweig's attempt to assign Sellars an impairment rating.

The Commission is duty-bound to accept or reject medical opinions and determine their medical soundness and probative force. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 46, 968 S.W.2d 637, 640 (1998). It was therefore the Commission's job to consider the words "speculate" and "extrapolate" in Dr. Rosenzweig's opinion and weigh that opinion. Of course the Commission may not arbitrarily disregard the testimony of any witness. *Patterson v. Frito Lay, Inc.*, 66 Ark.

App. 159, 164, 992 S.W.2d 130, 133 (1999). It did not. The Commission weighed this evidence and found that “because Dr. Rosenzweig’s rating was admittedly speculative, it does not comply with the Act.” We cannot say that no substantial evidence supports the Commission’s conclusion. *Stone, supra*. We therefore affirm the Commission’s denial of permanent impairment benefits—not because of the words chosen by Sellars’s physician, but because we are bound by our standard of review to defer to the Commission’s weighing of the medical evidence.

Affirmed.

GLADWIN and MILLER, JJ., agree.
